

[Unreported]

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.**

CRIMINAL APPEAL NO. 651 OF 1989.

The State of Maharashtra : Appellant.
versus.

1] Krishanlal Gullumal Karda

Age : 50 yrs. Occ. Business

R/at : Bhatnagar App.Dr.Juneja

Clinic, Pimpri Pune - 17 : Respondents.

2] Arjundas Govindram Gehi. (Org.Accused)

Age : 44 yrs. Occ. Business.

R/at : 'B' Block, 19/4, Pimpri

Colony, Pune -17.

Mr.D.R.More, APP, for the State.

Mr.Shirish Gupte with Ms.Sharmila Kaushik for the
respondents.

CORAM : D.G.DESHPANDE, J.

DATED : 26th July 2004.

ORAL JUDGMENT

1. Heard Mr.More, the learned APP, appearing for the State and Mr.Gupte, the counsel appearing for the respondents.

2. This is an appeal filed by the State against the acquittal of the accused for the offences punishable under Section 135 of the Customs Act r/w Section 34 of the Indian Penal Code.

3. It is the case of the prosecution that on 13.9.1985 the officers of the Preventive Branch detained accused No.1 at the Pune Railway Station. The search of his baggage resulted in the recovery of goods of foreign origin valued at Rs.43,260/-. The goods included stereo, radio, cassette recorders, lighters, watches, textiles and cigarettes etc. The search was carried out in the presence of accused No.1. The officers, in reasonable belief that the goods were smuggled, took action under Section 111 of the Customs Act and prepared a panchanama dated 13.9.1985. This panchanama is at Exhibit 34.

4. During the follow up action accused No.2 was also intercepted at Gurunanak Nagar, Pune on the same day and search of his brief case was carried out. In his brief case goods of foreign origin valued at Rs.5,900/- such as car stereo, calculator, transistors, etc. were found. Both the accused were prosecuted and came to be acquitted by the trial Court by judgment dated 26.5.1989. It is against this judgment of acquittal the present appeal has been filed by the State.

5. Mr.Gupte, the counsel appearing for the respondents/accused, firstly contended that if the Magistrate has acquitted the accused 19 years back under the provisions of Customs Act and when admittedly, action for adjudication was taken against the accused, the goods referred to above were confiscated and the accused were made to pay penalty of Rs.10,000/- and Rs.5,000/- respectively, then there was no case for interference.

6. Secondly, Mr.Gupte pointed out that from

the panchanama Exhibit 34 it appears that firstly there was mention of 24 items, which included Sony colour TV; National VCR, Two-in-One, Telephone instruments etc. For all these 24 items the accused had paid the customs duty. However, in the same panchanama other 40 items were listed about which the accused had no satisfactory explanation. Five out of 40 items were electronic instruments and others were cigarette lighters, calculators and then from Item No.9 to 32 all were dress materials and others were wrist watches. Mr.Gupte urged that the trial Court has already held that the prosecution has failed to prove that the goods were smuggled or illegally imported. He contended that the burden that the goods were smuggled was on the prosecution and, the prosecution could not succeed merely by showing that the labels printed on the goods. He submitted that such labels was not the evidence in support of the contention that the goods were smuggled goods. The prosecution was duty bound to examine some expert in that regard. But the prosecution has failed to do so. Hence the trial Court has rightly acquitted the accused.

7. Mr.Gupte further contended that the trial Court has discarded the case of the prosecution on the ground that sanction was not proved properly because Mr.Mohile, the Collector, Customs and Central Excise, Pune, who accorded the sanction, was not examined by the prosecution and the sanction came to be proved only by the evidence of witness who could identify the signature of Mr.Mohile on the sanction. Mr.Gupte pointed out that granting sanction was a mental process and sanctioning authority was required to prove that he was satisfied after perusal of the record before granting the sanction. In the absence of any such evidence, according to Mr.Gupte, was justified in acquittal of the accused.

8. I find considerable force in the submissions made by Mr.Gupte. Firstly appeal against acquittal has come before this court for final hearing after 19 years. Secondly, adjudication proceedings against both the accused were held; goods were confiscated and penalties were imposed upon them. Thirdly, for most of the items out of 40, there is absolutely no evidence to show that they were smuggled or illegally

imported. Considering therefore all the circumstances it cannot be said that the judgment of acquittal is perverse. Therefore only because two views are possible, it is not proper to convert the acquittal into conviction. Therefore, appeal is dismissed. Both the accused are on bail. Their bail bonds shall stand cancelled.

26.07.2004

[D.G.DESHPANDE]

JUDGE.